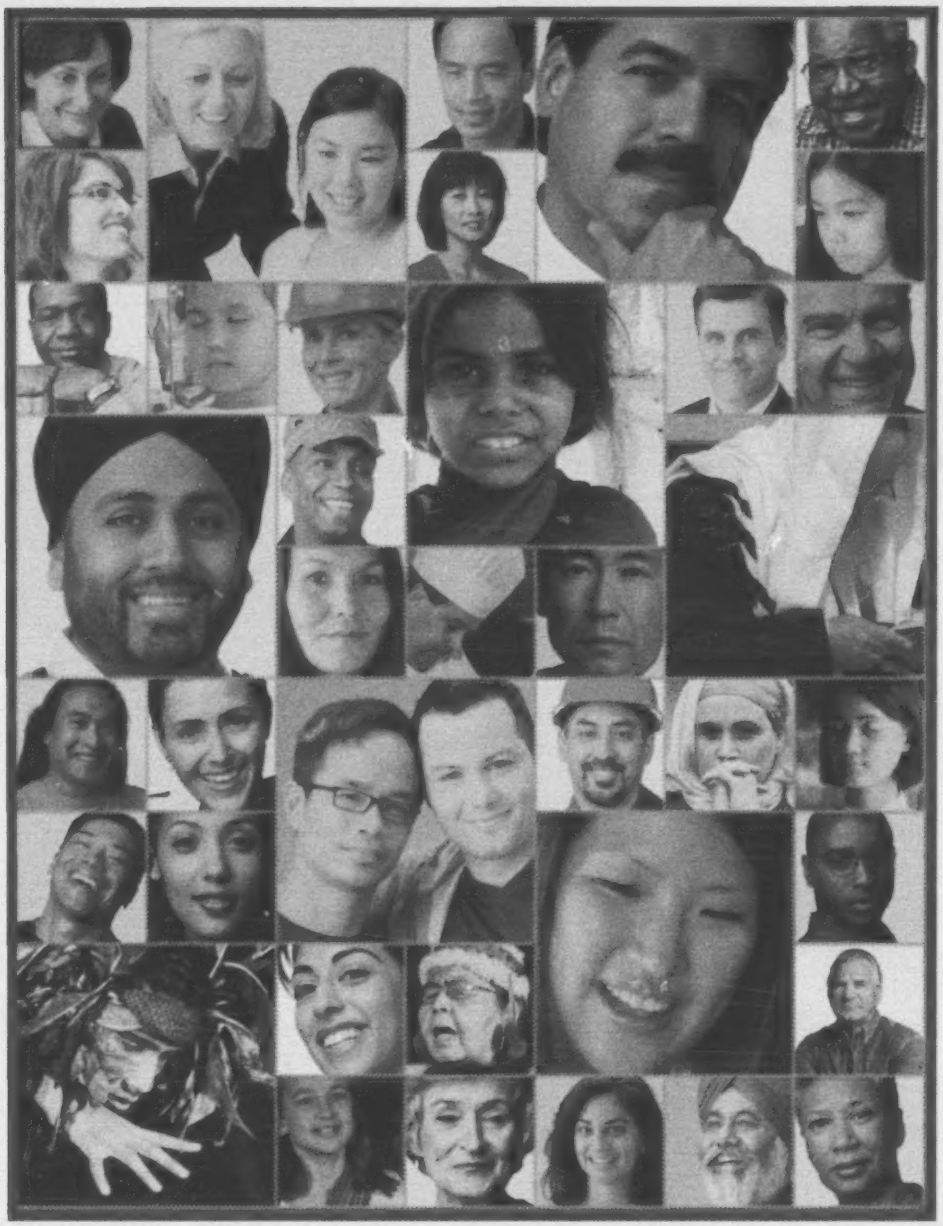
BC Human Rights Tribunal

Annual Report 2013-2014



BRITISH COLUMBIA

British Columbia Human Rights Tribunal

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July 11, 2014

The Honourable Suzanne Anton
Minister of Justice
Room 232
Parliament Buildings
Victoria, BC, V8V 1X4

Minister!

In accordance with s. 39.1 of the *Human Rights Code*, I submit the Annual Report of the BC Human Rights Tribunal for Fiscal year April 1, 2013 to March 31, 2014.

For context, I first provide a brief overview of relevant workload indicators for the reporting period.

FY 2013-14 Key Workload Indicators

ACTIVITY	FY 2013-14	FY 2012-13	% CHANGE
Complaints at Beginning of Year	**880**	**990**	**(-11%)**
Complaints Received	**1102**	**1028**	**(+7%)**
• Accepted for Processing	801	619	(+23%)
• Rejected at Screening	301	409	(-26%)
Complaints Settled	**555**	**479**	**(+16%)**
Applications to Dismiss	**233**	**310**	**(-25%)**
Decisions After Hearing	**36**	**51**	**(-29%)**
Complaints at Year End	**820**	**880**	**(-7%)**
Total Complaints Handled	**1982**	**2018**	**(-2%)**

Additional key aspects of the profile of the Tribunal's complaints may be found at p. 2-5 of this Report.

FY 2013-14 Operational Update: Progress of Reform Agenda

At our last meeting, I provided you with the November 2011, directions of the (then) Deputy Attorney General in respect of a review of the Tribunal's operations, procedures and practices. As in last year's Annual Report, this transmittal letter, will update you on the Tribunal's progress toward improving and rendering more efficient the services it provides to the citizens of British Columbia, in furtherance of that mandate.

The following is a summary of the Tribunal's progress in the reform of its key operational and procedural activities.

1. Complaint Intake and Screening: Timeliness and Consistency

Critical goals for this early, but crucial, aspect of the Tribunal's process are:

- To provide enhanced, meaningful process information and choices at the point of initial contact between the Tribunal and its publics;
- To improve the quality, quantity and utility of information contained in complaints filed with the Tribunal;
- To render intake and screening of complaints more timely and consistent;
- To provide respondents with early notice of complaints.

To advance these goals, we have continued to dedicate a single, experienced Case Manager to the all-important screening function. One benefit of this model is that it ensures that less complex complaints are either rejected or accepted within no more than 30 days of filing.

Under the auspices of the Tribunal Transformation initiative, we have had several meetings to discuss the Expert Information Delivery System being developed by that project, particularly its potential adaptation to the Tribunal's needs. Better foundational information about the elements of a complaint, the complaint process, the Tribunal's services, its expectations and available options, should enable a measure of self-assessment or self-screening by users, increasing the likelihood that complaints which are filed are meritorious.

2. Tribunal Forms Redesign: Quality and Clarity

On February 11, 2014, following painstaking review and testing, and incorporating user input, the Tribunal rolled out a suite of new complaint, response and time limit forms. Corresponding electronic information sheets are also revised. The entire redesign

process has focused on giving clear instruction, yielding better information in relation to complaints, using language which tracks the elements of a *prima facie* case of discrimination.

Tribunal forms are available not only in hard copy, but also in smart electronic format, allowing for direct e-filing. During the past year, half of our complaints were e-filed. Since the introduction of the new forms almost all new complaints have been filed and case-managed electronically. Either format includes detailed information to guide users in the preparation of complaints and responses. Early evidence suggests that complaint quality has improved and this is reducing processing time.

Users and stakeholders are invited to provide feedback about their experience with the new forms so that they may be continuously enhanced and improved.

3. Tribunal Rules of Practice & Procedure Revised: Focus & Brevity

Just after the end of this reporting period, new Tribunal Rules of Practice and Procedure, which reflect the foregoing as well as other changes, will be promulgated.

The new Rules will be far more succinct and focussed on user expectations. The Rules will also implement some substantive procedural changes in respect of document disclosure obligations, the filing of applications and amendments, as well as the timely production of expert reports.

Publication of the new Rules will be accompanied by an entire suite of new website-based resources to provide detailed, instrumental guidance in navigating the Tribunal's process.

4. Tribunal Settlement/Mediation: Assertive & Timely Resolution Services

In FY 2013/14, the Tribunal conducted 484 settlement meetings, as compared to 438 in FY 2012/13. Three hundred and ninety-one (391), of these resulted in resolution of the complaint. This represents a historically high, 80% settlement rate (76% last year). As well, 164 complaints were resolved without utilizing the Tribunal's services, bringing the total complaints resolved to 555.

In order to identify and maximize appropriate opportunities to resolve complaints as early as possible, front-line Tribunal staff were provided with focussed training about the mediation process and its benefits, as well as the opportunity to attend and observe actual mediation sessions. This has equipped staff to speak to participants, in an authoritative and informed way, about the process and the benefits of informal complaint resolution.

Tribunal staff are instructed to discuss the option of mediation as early as the inquiry stage and the issue is revisited throughout, and at key events in the progress of a complaint.

Currently, once parties express interest and agreement, formal mediation can be convened within three months.

Budget reductions imposed for the coming fiscal year will force more aggressive exploration of video, audio and online technology to conduct mediations.

5. Tribunal Hearings and Final Decisions

In FY 2012/13, the Tribunal rendered 51 final decisions (5% of total complaints filed).

In FY 2013/14, the Tribunal issued just 36 final decisions (3% of total complaints filed).

Fifteen (15), complaints, (42%), were found to be justified after a hearing. Twenty-one (21) complaints, (58%), were dismissed, (51% in 2012/13).

The dramatically reduced number of final decisions is a reflection of the Tribunal's assertive approach to broaching the settlement option early and repeatedly up to the very date of a hearing.

In FY 2013/14, the average duration of a hearing was three days (consistent with past experience). Two hearings lasted over five days.

This year, for the first time, witnesses and even parties appeared and testified at hearings remotely, using Skype. This technology promises a fair and cost-effective option. We expect its application to both hearings and mediations to increase.

A hearing can take a variety of forms. We invite parties to remain vigilant in terms of identifying cases which might benefit from, or be amenable to creative, expedited or summary hearing processes.

6. Tribunal Organization: Focussing Scarce Resources

In keeping with my commitment to deploy its scarce resources to front-end service delivery, to the maximum possible extent, the Tribunal has, despite the imposition of a significant budget reduction, been able to augment its Inquiry Officer, Case Manager functions, from within its remaining allocated human resources.

Case Manager case loads have been excessive. Adding a position should offer some healthy relief. It will also allow Case Managers to devote more time to exploring and engaging in an informed way with participants and to continue to maintain the dedicated screening function which has been so effective.

Objectives Unmet

In my view, the Tribunal's Members and staff are entitled to derive a measure of satisfaction from the effectiveness and efficiency of the procedural reforms which have been implemented in the course of the past three years, while maintaining fundamental fairness for all. To some extent, the Tribunal has actively and effectively rebranded itself after being besieged by rumour, speculation and even partisan antipathy, in 2010-11.

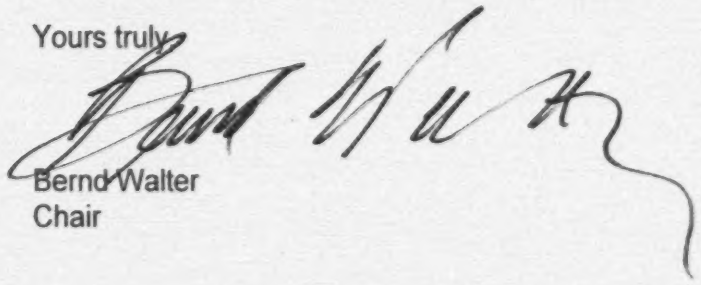
Nevertheless, challenges continue. Not all goals have been realized. For example, while I recognize and respect government's fiscal circumstances and choices, and acknowledge that the issue is much broader than this Tribunal, the fact that Member compensation has not been reconsidered since 2007, is discouraging to positive workplace morale.

The Tribunal proposed modest recommendations to amend the *Human Rights Code*, as well as for an amendment to the *Administrative Tribunals Act*, in respect of the standard which Courts apply in reviewing the Tribunal's decisions. All of these amendments were based in considerations of simplifying, streamlining and rendering more efficient the BCHRT's processes. They would have done no more than to place the Tribunal on the same footing as the rest of Canada's Human Rights Tribunals. Despite apparent initial positive support, this initiative has not progressed.

As reflected in the Tribunal's 2011-12 Annual Report, one adjudicator, whose appointment expired in 2010, remains seized of a single outstanding matter, under Section 7 of the *ATA*. The Tribunal has been operating with an effective shortage of one adjudicative member, since August 2010. I currently have before the Minister a recommendation for the re-appointment of one member whose term expires on January 1, 2015. I humbly reiterate my request for this individual's timely re-appointment.

Finally I must once again acknowledge the efforts of the Tribunal's staff, Legal Counsel, and Members for their commitment and diligence.

Yours truly,



Bernd Walter
Chair

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Tribunal Mandate and Purpose

The British Columbia Human Rights Tribunal is an independent, quasi-judicial body, established under the *Human Rights Code*, to resolve and adjudicate human rights complaints in a manner that is consistent with the purposes set out in section 3:

a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;

b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;

c) to prevent discrimination prohibited by this *Code*;

d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this *Code*;

e) to provide a means of redress for those persons who are discriminated against contrary to this *Code*.

On March 31, 2003, British Columbia instituted a direct access model for human rights complaints.

The direct access Tribunal is complainant driven. The Tribunal does not have investigatory powers. Complaints are filed directly with the Tribunal which is responsible for all steps in the resolution and adjudication of human rights complaints.

New complaints are assessed to see that the information provided is adequate, that the Tribunal has jurisdiction over the matters set out, and that they are filed within the six-month time period set out in the *Code*. If a complaint is accepted for filing, the Tribunal notifies the respondents who then file a response to the allegations of discrimination.

Unless the parties settle the issues, or a respondent successfully applies to have the complaint dismissed, a hearing is held and a decision about whether the complaint is justified, and how it should be remedied, is rendered.

The Tribunal conducts hearings and settlement meetings throughout the Province. The Tribunal's practices and procedures are governed by its Rules.

Inquiry and Complaint Statistics

Inquiry Statistics

Inquiries about the Tribunal's complaint process are answered by Inquiry Officers. They provide information about the *Code* and also make referrals to other relevant community and government resources. The Tribunal is accessible from anywhere in the province by toll-free number or email.

In 2013/14, the Tribunal responded to 6,698 telephone and 2,137 email inquiries. Our website was visited 131,609 times (an average of 361 visits per day).

Cases Handled
April 1, 2013 - March 31, 2014

		Variance (2012-2013)
Active Cases - Start of Year	880	⬇11%
New Cases	1102	⬆7%
Total Cases Handled	1982	⬇2%
Cases Closed	1108	⬇10%
Active Cases - End of Year	820	⬇7%

New Cases Screening

The Tribunal screens all complaints to ensure that they are within provincial jurisdiction, and to determine whether they set out a contravention of the *Code*.

New Cases Screening
April 1, 2013 - March 31, 2014

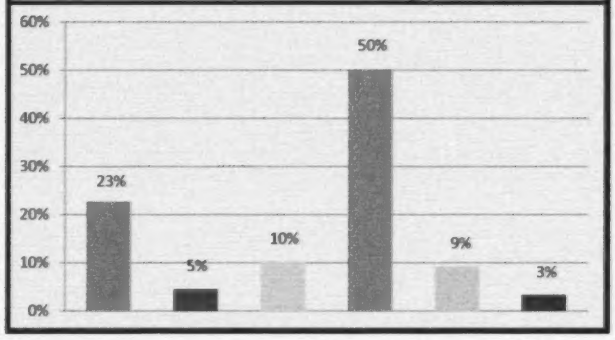
New Cases	1102	
Cases Rejected	301	27%
Cases Accepted for Filing	801	73%

Closed Cases

Cases are closed when they are not accepted for filing at the initial screening stage, withdrawn because they have settled or are abandoned, dismissed or when a decision is rendered after a hearing.

Cases Closed by Reason
April 1, 2013 - March 31, 2014

Cases Rejected During Screening	251	23%
Late Filed Complaints Rejected	**50**	**5%**
Applications to Dismiss Granted	114	10%
Cases Settled	555	50%
Cases Withdrawn or Abandoned	102	9%
Decisions Rendered After Hearing	**36**	**3%**
Total Cases Closed	**1108**	



Complaints by Areas and Grounds

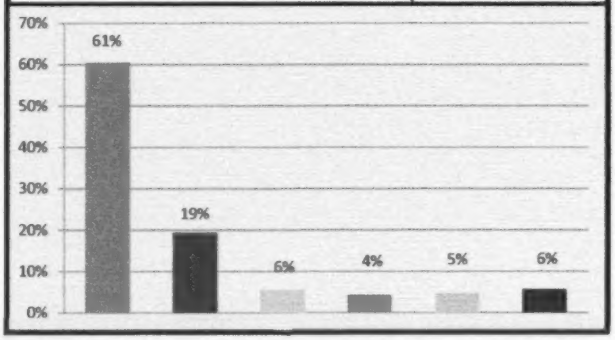
Areas and Grounds of Discrimination

The *Code* prohibits discrimination in the **areas** of employment, service, publication, tenancy, membership in unions and associations, employment advertisements, wages, and purchase of property. It also prohibits retaliation against a person who has made a complaint under the *Code*.

There are 15 prohibited **grounds** of discrimination: physical disability, mental disability, sex (including sexual harassment and pregnancy), race, place of origin, colour, ancestry, age (19 and over), family status, marital status, religion, sexual orientation, political belief, unrelated criminal conviction and lawful source of income.

Complaints by Areas of Discrimination
April 1, 2013 - March 31, 2014

Section 13 - Employment	710	61%
Section 8 - Service	**227**	**19%**
Section 7 - Publication	65	6%
Section 10 - Tenancy	49	4%
Section 43 - Retaliation	55	5%
Total Other - (listed below)	**67**	**6%**
Section 14 - Membership	43	4%
Section 12 - Wages	9	1%
Section 11 - Employment Ads	8	1%
Section 9 - Purchase of Property	7	1%
Total Areas Alleged	**1173**	

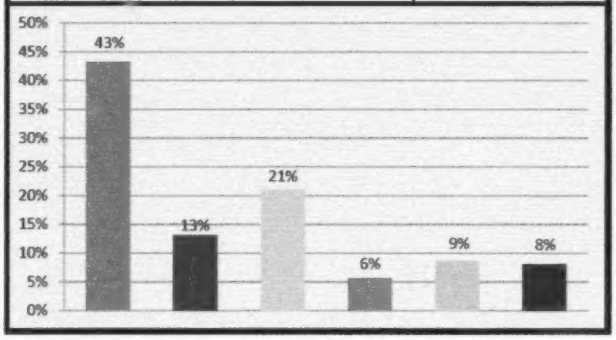


Not all grounds apply to all areas.

A complaint may include more than one **area** or **ground** of discrimination. For instance, an employment-based complaint may also include the **area** of wages; a race-based complaint may also include **grounds** of ancestry, colour and place of origin.

Complaints by Grounds of Discrimination
April 1, 2013 - March 31, 2014

Total - Disability	688	43%
Physical Disability	417	26%
Mental Disability	271	17%
Sex (Including Sexual Harassment and Pregnancy)	**209**	**13%**
Total - Ethnicity	335	21%
Race	129	8%
Place of Origin	85	5%
Colour	59	4%
Ancestry	62	4%
Age	90	6%
Total - Family and Marital Status	139	9%
Family Status	104	7%
Marital Status	35	2%
Total Other - (listed below)	**128**	**8%**
Religion	51	3%
Sexual Orientation	37	2%
Political Belief	23	1%
Unrelated Criminal Conviction	9	1%
Lawful Source of Income	8	1%
Total Grounds Alleged	**1589**	



Settlement Services

The Tribunal encourages parties to engage in settlement discussions. Settlement meetings are confidential. The Tribunal does not publish the results.

Tribunal-assisted settlement services are initiated even before the respondent files a response to the complaint, and at any later stage in the progress of a complaint. Many complaints settle as a result of these efforts, including solutions which could not be ordered after a hearing.

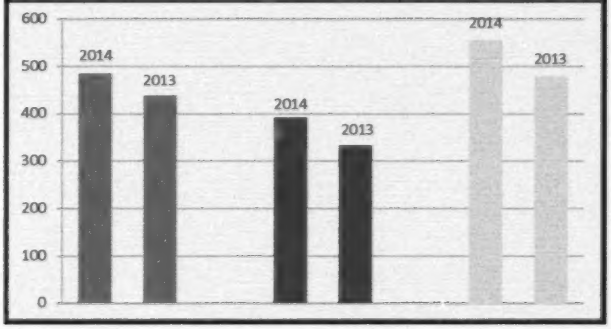
In 2013-14, the Tribunal conducted 484 settlement meetings, including 372 early settlement meetings, before a response to a complaint was filed.

The parties were able to resolve their disputes in 391 (81%) cases in which the Tribunal provided assistance.

Some cases settle without the Tribunal's involvement. In 2013-14, 555 cases settled in total.

Case Settlements
April 1, 2013 - March 31, 2014

		Variance
Settlement Meetings Held	484	↑11%
(2012-2013)	438	
Settled with Tribunal Assistance	**391**	**↑18%**
(2012-2013)	332	
Total Settled Complaints	555	↑16%
(2012-2013)	479	



Preliminary Decisions

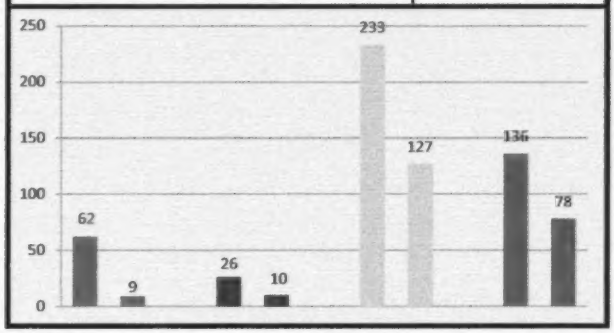
The Tribunal published 296 decisons this year. It also issued 160 decisions in letter form. Letter decisions are used when the matter is considered to be of interest only to the parties to a complaint.

Preliminary Decisions

Most of the Tribunal's decisions (416) are "preliminary" decisions that do not decide the merits of a complaint. Some preliminary decisions were final in nature when they resulted in an end to the complaint process. Some decisions involved multiple sections of the *Code*.

Preliminary Decisions by Section
April 1, 2013 - March 31, 2014

Section 22 - Time Limit	62	15%
Granted (Complaint Accepted)	9	15%
Section 25 - Deferral	**26**	**6%**
Granted (Complaint Deferred)	10	38%
Section 27 - Dismissal	233	56%
Granted (Complaint Dismissed)	127	55%
Other - Various	136	33%
Granted	78	57%
Total Preliminary Decisions (some involved multiple sections)	**416**	



Time Limit Applications

Section 22 of the *Code* provides a six-month time limit for filing complaints.

A complaint about events which occurred more than six months before the complaint was filed may be accepted if it alleges a "continuing contravention", where the most recent incident occurred within six months of filing.

The Tribunal may accept a complaint or part of a complaint filed after the time limit if it is in the public interest to do so and no substantial prejudice would result to anyone because of the delay.

This year, the Tribunal considered 97 applications under s. 22 of the *Code*, representing 23% of preliminary decisions. This number includes 35 applications to dismiss a complaint made under s. 27(1)(g) of the *Code*, which also involves consideration of timeliness.

The Tribunal found that 8 complaints were timely, at least in part (7 because they were timely continuing contraventions under s. 22(2) of the *Code*). The Tribunal accepted 12 late-filed complaints under s. 22(3).

The Tribunal found that 66 complaints were untimely, at least in part (including 20 under s. 27(1)(g)). 50 complaints were not accepted or were dismissed as untimely (including 13 under s. 27(1)(g)).

Deferral of Complaints

This year, the Tribunal considered 26 applications under s. 25 of the *Code*, to defer a complaint on the basis that the substance of the complaint could be appropriately dealt with in another proceeding. The Tribunal deferred the complaint in 10 cases.

Dismissal Applications

Section 27(1) allows complaints that do not warrant the time or expense of a hearing, to be dismissed without a hearing on the merits.

Final Decisions

Applications to dismiss accounted for 56% of preliminary decisions this year. Of 233 decisions, 127 (55%) were dismissed and 29 (12%) were partially dismissed.

The Tribunal denied 77 (33%) applications to dismiss.

Other Decisions

The Tribunal makes oral and written decisions on other matters, such as amending complaints, adding respondents, disclosure, costs, and limiting publication.

The Tribunal issued 136 decisions on other matters, representing 33% of preliminary decisions this year.

Final Decisions

This year, the Tribunal made 36 final decisions after a hearing, compared to 51 last year.

42% of the complaints (15 out of 36) were found justified in whole or in part, 58% (21) were dismissed.

Representation Before the Tribunal

A complaint was dismissed in 2 cases because the complainant did not appear.

In 3 cases, no respondent appeared. The complaint was found to be justified in 2 of those cases.

Consistent with prior years, more complainants were self-represented in final hearings on the merits than were respondents.

Complainants had a lawyer in 12 cases (36%, compared to 32% last year).

Respondents had a lawyer in 24 cases (73%, compared to 57% last year).

Both parties had a lawyer in 10 cases.

There has historically been a correlation between legal representation and success for complainants. This year, this was not the case. In 12 cases where the complainants had a lawyer, they succeeded in only 4 cases (33%).

In 22 cases where the complainant appeared without a lawyer, they succeeded in 11 (50%).

A complaint was dismissed in 16 of the 24 cases (67%) in which respondents had legal counsel, and in 5 of the 9 cases (55%) in which respondents did not have legal counsel.

Case Highlights

Highlights of this year's final decisions:

- the majority of decisions (26 of 36) involved the area of employment; 11 were found to be justified;
- 6 decisions involved services; 1 was found to be justified;
- 3 involved tenancy; 2 were found to be justified;
- 2 involved publications; 2 were dismissed;
- 4 alleged retaliation; 2 were found to be justified;
- no decisions involved the areas of purchase of property; employment advertisements; lower rate of pay based on sex; membership in a union, employer's organization or occupational association.

Regarding the grounds of discrimination:

- 20 decisions dealt with physical and/or mental

disability; 7 were found to be justified;

- of those 20 decisions, 17 dealt with physical disability (7 justified) and 5 dealt with mental disability (1 justified);
- 8 cases alleged sex discrimination; 5 were found to be justified;
- of those 8, 4 were about pregnancy (2 justified); 3 alleged sexual harassment (2 justified);
- 6 cases alleged discrimination on the grounds of race, ancestry, colour and/or place of origin; 1 was found to be justified;
- 3 cases dealt with family status; 2 were found to be justified;
- 2 cases dealt with religion; both were dismissed;
- 1 case dealt with age; it was found to be justified;
- 1 case dealt with sexual orientation; it was dismissed;
- no cases dealt with political belief, criminal conviction, marital status, or lawful source of income.

FINAL DECISIONS OF INTEREST

SECTION 7: PUBLICATION

The Tribunal decided 2 complaints dealing with the area of publication.

In ***MacKenzie v. Village of Pemberton and another (No. 2)*, 2013 BCHRT 216**, the complainant was a firefighter and a Village Councillor. The respondent fire chief gave an interview in which he identified the complainant as a gay man, was critical of the complainant's leadership abilities, and referred to some details of an earlier human rights complaint between the parties, contrary to their settlement agreement. The interview was later published as part of a newspaper article. The Tribunal found no breach of s. 7 of the *Code*. The article, when viewed objectively, was not likely to expose the complainant to hatred or contempt, and did not reflect stereotypical views of gay people. The complainant was an openly gay public figure. Under s. 7(1)(a), there was no intent to discriminate on the basis of the complainant's sexual orientation. On the contrary, it was clear that the complainant sought to use his power as a Councillor to remove the chief from his position, and that the chief gave the interview in an effort to preserve his job and to respond to the complainant's allegations against him in the press. (The Tribunal also found the remainder of the complaint was not justified.)

In ***Swetlishoff v. B.C. (Ministry of Attorney General) (No. 2)*, 2013 BCHRT 106**, the complaint was brought on behalf of the New Denver Survivors Collective, who, in the 1950s, had been apprehended and confined by order of the B.C. government because they were the children of Sons of Doukhobor parents. The complaint alleged discrimination on the grounds of race, ancestry and religion contrary to s. 7 of the *Code* in relation to the government's present day response to their confinement. This response included the construction of a historical site and proposed memorial, which the Tribunal accepted could be activity captured under s. 7 of the *Code*. However, the Tribunal found that the other elements of s. 7 were not satisfied, as the government ultimately ceased construction of the site due to the Survivor's concerns and the site was not perceived to be religious in nature. (The Tribunal also found the complaint under s. 8 was not justified.)

Final Decisions

Section 8: Services

In ***Rai and others v. Shark Club of Langley (No. 2)*, 2013 BCHRT 204**, the complainants, who are of Indian descent, were denied entrance to a nightclub operated by the respondents. They wished to attend a graduation party for which they had a reservation. The club admitted several Caucasian patrons, none of whom had reservations or tickets. The respondents alleged that the complainants were belligerent and made threats, but the Tribunal found that they had been well-behaved. On the whole, the Tribunal did not find the respondents' witnesses' evidence credible.

The Tribunal found that the respondents discriminated in the provision of a service, contrary to s. 8 of the *Code*. While the club admitted other Indo-Canadian patrons on the same evening, it provided no reasonable explanation for its decision to deny entry to the complainants. The complainants' race and colour were factors in their treatment. The Tribunal ordered the respondents to pay $10,000 to each of the complainants for injury to dignity, feelings, and self-respect.

Section 10: Tenancy

In ***Horneland v. Wong and another*, 2014 BCHRT 3**, the respondent refused to rent a suite to the complainant, who had a young child. The complainant's proposed roommate had two cats, and the respondent pointed to this as the reason the tenancy was refused. However, the respondent had repeatedly stated in her ads that pets were allowed. The evidence showed that the respondent had reservations about children living on an upper floor. The Tribunal found that the respondent discriminated on the ground of family status by refusing to properly consider the complainant's application. The complainant was clearly offended by what she took to be an injustice, and the Tribunal awarded $2,500 for injury to dignity, feelings, and self-respect.

In ***Redmond v. Hunter Hill Housing Co-op (No. 2)*, 2013 BCHRT 276**, the Tribunal found discrimination in tenancy when the respondent refused to make appropriate inquiries and to determine whether they were reasonably able provide the accommodation needed to resolve the complainant's mould allergy. The Tribunal ordered $10,000 for injury to the complainant's dignity, feelings and self-respect. It considered the length of time the complainant was living in the unit, during which she was significantly affected by her allergy symptoms, that the respondent treated her with disparagement, and that moving had a lasting impact on the complainant.

Section 13: Employment

***Cassidy v. Emergency Health Services Commission and another (No. 5)*, 2013 BCHRT 116** was a court-ordered reconsideration of the Tribunal's decision in ***Cassidy (No. 2)*, 2008 BCHRT 125**. The complainant was a paramedic with multiple sclerosis and could not manually feel a patient's pulse, but who could drive an ambulance and perform other duties. On reconsideration, the Tribunal again found the complaint justified as accommodating the complainant into a driver-only role would not be an undue hardship for the respondents. There were already 135 such driver-only employees in the province, and adding one more would not substantially increase the risk to patients or the cost to the respondents. The Tribunal ordered the respondents to pay the complainant for the shifts he would have been awarded but for the discrimination, and reaffirmed its earlier award of $22,500 for injury to dignity, feelings, and self-respect. A judicial review application is scheduled to be heard in 2014.

In ***Davidson v. O'Brien Road and Bridge Maintenance and another*, 2013 BCHRT 123**, the respondents terminated the complainant's employment because they perceived him to suffer from a significant, long-term physical impairment in his ability to perform the work. The complainant was offended and belittled by the words spoken to him,

and by the suggestion that his physical condition made him unable to work. He took apparent pride in his ability to do so. He wanted an apology. The respondents made no submission on remedy. The Tribunal awarded $4,000 for injury to dignity, feelings and self-respect.

In ***Price v. Top Line Roofing*, 2013 BCHRT 306**, the Tribunal found that the complainant's age was a factor in the termination of his employment as a journeyman. The respondent expressed concerns about "lack of productivity" and "slowness" though it had not informed the complainant of any performance concerns. The Tribunal said that aging and capacity to perform work may be linked, but an employer cannot terminate employment based on stereotypic assumptions about age. If a termination is performance-related, the employer must treat the older worker with the same respect accorded to all employees, that is, notice of performance problems and an opportunity to meet workplace standards. If a disability is involved, the employer has a duty to accommodate. In this case, the evidence that younger employees were hired shortly after the layoff of the complainant permitted the Tribunal to infer that age was a factor in the termination, and the employer's evidence was not sufficient to conclude otherwise. The complainant sought and was awarded compensation for wage loss.

SECTIONS 8 AND 13: SERVICES AND EMPLOYMENT

In ***Kelly v. UBC (No. 4)*, 2013 BCHRT 302**, the complainant was a medical resident with mental disabilities who was enrolled in the respondent university's residency program. The university terminated his participation in the program. In a previous decision, the Tribunal found discrimination in employment and services. In this decision, the Tribunal made a remedial order, including a determination that the unique and serious circumstances of the case warranted an award of $75,000 for injury to dignity, feelings, and self-respect. The Tribunal considered that the complainant lost the opportunity to complete the program, apply for licensing and practice in the career of his choosing and to which he had committed considerable time and resources, and that the loss had a serious and detrimental impact. This included deep humiliation and embarrassment over a significant period of time (from his termination in 2007 until his reinstatement to the program in 2013), symptoms of depression and other health-related problems, loss of self-identity, and feelings of worthlessness and despair and uncertainty about his future. (A petition has been filed.)

SECTION 43: RETALIATION

In ***Macklem v. Cambie Malone's*, 2014 BCHRT 56**, the complainant was an employee in the respondent's liquor store. She felt that she was being passed over for promotions because of her sex. In 2011, she filed a human rights complaint to that effect. Later that year, she was first given two months' notice of termination, and later dismissed immediately for cause. She amended her complaint to include an allegation of retaliation. The Tribunal dismissed the complaint on the ground of sex, but found that the human rights complaint was a significant factor in the respondent's decision to terminate. The termination was therefore retaliatory, contrary to s. 43 of the *Code*. The Tribunal awarded an amount for lost wages and $1,000 for injury to dignity, feelings, and self-respect, though there was no direct evidence on this point.

Judicial Reviews and Appeals

The *Code* does not provide for appeals of Tribunal decisions but judicial review is available in B.C. Supreme Court, subject to a 60-day time limit for final decisions.

Judicial review is a limited type of review. Generally, the Court considers the information that the Tribunal had before it and decides if the Tribunal made a decision within its power. The Court applies standards of review in s. 59 of the *ATA* to determine whether the Tribunal's decision should be set aside. The Tribunal plays a limited role in judicial review. If the Tribunal's decision is set aside, the usual remedy is to send it back to the Tribunal for reconsideration.

A decision on judicial review may be appealed to the BC Court of Appeal. There is a further appeal to the Supreme Court of Canada if that Court agrees to hear it.

In FY 2013-14, there were 13 petitions for judicial review filed in the Supreme Court, as compared to 26 in FY 2012-13 and 27 in FY 2011-12.

There were 7 appeals filed with the BC Court of Appeal.

BC Supreme Court Judgments

This year, the BC Supreme Court issued 21 judgments on judicial review applications: 17 were dismissed and 4 were allowed.

Review of section 22 decisions

Six judgments reviewed Tribunal time limit decisions under s. 22 of the *Code*. Five applications were dismissed:

- *BC (Ministry of Attorney General) and another v. Sanghera*, (25 September 2013) Vancouver S130713 (BCSC) (An appeal has been filed)
- *Lewis v. BC (Public Safety and Solicitor General)*, 2013 BCSC 1980. (The court found the Tribunal's decision to reject a complaint as out of time was a discretionary decision which did not contain any 'extricable' elements that might attract a different standard of review.)
- *Patel v. Greater Vancouver (Regional District)*, 2013 BCSC 2154
- *Adolphs v. Boucher Institute of Naturopathic Medicine*, 2014 BCSC 298
- *Chen v. City of Surrey*, 2014 BCSC 539 (An appeal has been filed)

One application was allowed:

- *BC (Ministry of Public Safety and Solicitor General) v. Mzite*, 2013 BCSC 1116. (An appeal was heard on April 10, 2014.)

Review of section 27 decisions

Seven judgments reviewed decisions under s. 27 of the *Code*. Five applications were dismissed:

- *Schroeder v. United Steel*, (6 June 2013) Vancouver S118486 (BCSC) (An appeal has been filed)
- *Dean v. UBC and others*, (30 August 2013) Victoria 12-3191 (BCSC)
- *Novikova v. Thompson Rivers University*, 2013 BCSC 2156
- *Yaremy v. BCHRT*, 2013 BCSC 2386 (An appeal has been filed)
- *Edgewater Casino v. Chubb-Kennedy*, 2014 BCSC 416 (An appeal has been filed)

Two applications were allowed:

- *UBC v. Chan*, 2013 BCSC 942, where the court held that the Tribunal's decision not to dismiss the complaint under ss. 27(1)(c) and 27(1)(f) was patently unreasonable. The court sent the decision back to the Tribunal for reconsideration.

- *Kirk v. Burnaby*, 2014 BCSC 155, where the court found a breach of natural justice where the parties had unequal access to documents (the complainant disclosed her documents before the close of submissions). The complainant was not permitted to make additional, late submissions once the documents were disclosed to her, despite her assertion that they were relevant, and was not permitted to reply on the point of whether or not a formal application was needed to make the additional submissions.

REVIEW OF OTHER PRELIMINARY DECISIONS

The court dismissed two other petitions:

- *Parranto v. BCHRT*, (10 December 2013) Vancouver S137038 (BCSC)

- *Yirgaw v. BCHRT*, (13 December 2013) Vancouver S132860 (BCSC)

REVIEW OF DECISIONS FOLLOWING A HEARING OF THE COMPLAINT

In *Ismail v. BCHRT and others*, 2013 BCSC 1079, the court reviewed a Tribunal decision that found discrimination contrary to s. 8 of the *Code*. In dismissing the petition, the court held that s. 8 did not unjustifiably infringe freedom of expression and so was not unconstitutional, and that the Tribunal did not err in finding that the derogatory comments of one of the respondents constituted discrimination, the respondents were providing a service to the public, and one of the respondents was an employee of the other for the purposes of the *Code*.

In *Gichuru v. The Law Society of British Columbia*, 2013 BCSC 1325, the court declined to intervene in respect of the Tribunal's decision on remedy and other matters, except in the calculation of the petitioner's EI benefits, where all parties agreed that there had been an error. The court found no constitutional infringement. In *Gichuru v. The Law Society of British Columbia*, 2013 BCSC 2088, the court declined to reopen its hearing. (An appeal has been filed, and is scheduled to be heard in June 2014.)

In *Victoria Shipyards v. Francis*, 2013 BCSC 1410, the court set aside the Tribunal's decision and dismissed the complaint. The court said that, on the evidence, and considering the unreliability of the complainant's testimony, the Tribunal could not reasonably have come to the conclusion it did.

In *Victoria Gardens Housing Co-op v. Nicolosi*, 2013 BCSC 1989, the petitioner sought to overturn a Tribunal decision finding it liable for discrimination. On the question of discrimination, the court held that the evidence logically supported the Tribunal's decision. On the question of the Tribunal's failure to consider a statutory provision that was not argued by the respondent, the court held that there was no Tribunal decision on the provision, and therefore nothing to review. On the remedy question, the court held that the Tribunal's award was not patently unreasonable. The petition was dismissed.

BC COURT OF APPEAL

The BC Court of Appeal issued four judgments involving Tribunal decisions. Each resulted in the Tribunal decision standing.

Three appeals were in respect of decisions made after a hearing:

- *Forsyth v. Coast Mountain Bus Company*, 2013 BCCA 257, in which the Tribunal had dismissed the complaint and declined to order costs. (The Supreme Court of Canada denied leave to appeal.)

- *Silver Campsites Ltd. v. James*, 2013 BCCA 292, in which the Tribunal found the complaint justified and awarded $10,000 for injury to dignity, feelings and self-respect.

- *Caster v. Walter F. Evans (1973)*, 2013 BCCA 529, in which the Tribunal had dismissed the complaint and the reviewing judge had decided not to adjourn the hearing to obtain a transcript of the Tribunal proceeding.

In *I.J. v. J.A.M.*, 2013 BCCA 403, the court determined that the appellant pleaded no reasonable basis on which a court could quash the Tribunal's time limit decision.

SUPREME COURT OF CANADA

The Court heard an appeal from *Fasken Martineau DuMoulin LLP v. British Columbia (Human Rights Tribunal)*, 2012 BCCA 313 on December 13, 2013.

SPECIAL PROGRAMS AND POLICY

Section 42(3) of the *Code* recognizes that treating everyone equally does not always promote true equality and the elimination of discrimination. It allows approval of special programs which treat disadvantaged individuals or groups differently to recognize their diverse characteristics and unique needs and improve their conditions.

Special Program approvals are generally for six months to five years but may be renewed. Employment equity programs are usually approved for several years. Periodic reporting is required.

When a special program is approved by the Chair, its activities are deemed not to be discrimination.

The Tribunal's Special Programs Policy and a list of special programs approved are posted on the Tribunal's website.

The Chair approved 17 Special Programs this year:

- **Heartwood Centre for Women**: Hiring restricted to women for all staff positions at a specialized treatment centre for women 19 years of age and over who have substance dependency, concurrent disorder, trauma and physical co-morbidities. The Centre is a program of the British Columbia Mental Health and Substance Use Services, an agency of the Provincial Health Services Authority.

- **Legal Services Society**: Hiring preference given to individuals of Aboriginal ancestry for the positions of Family Staff Lawyer in Terrace, and Aboriginal Community Legal Worker in Nanaimo.

- **Native Education College**: Hiring restricted to individuals of Aboriginal ancestry, as well as programs and services restricted to individuals of Aboriginal ancestry. Native Education College is British Columbia's largest private Aboriginal college offering programs leading to certificates and diplomas that provide access to employment or further post-secondary education.

- **School District No. 23 (Central Okanagan)**: Restrict hiring to individuals of Aboriginal ancestry for the positions of Aboriginal Advocate, Aboriginal Cultural Facilitator, Aboriginal Cultural Assistant, Okanagan Language Instructor, and Aboriginal Cultural Presenter.

- **School District No. 28 (Quesnel)**: Restrict hiring to individuals of Aboriginal ancestry for any teaching position assigned to the Aboriginal Education Department and for the positions of Aboriginal Education Support Worker and Aboriginal Youth Care Worker.

- **School District No. 36 (Surrey)**: Restrict hiring to individuals of Aboriginal ancestry for one Aboriginal District Principal, 25 Teachers, and 65 Support Workers in the Aboriginal Education Program. Restrict hiring to individuals from specific minority cultures and linguistic backgrounds that have the requisite language skills as Multicultural Workers to a maximum of 18 positions. Restrict hiring to people who have the requisite language skills as Settlement Workers to a maximum of 25 positions.

- **School District No. 42 (Maple Ridge-Pitt Meadows)**: Restrict hiring to individuals of Aboriginal ancestry for the positions of Aboriginal Support Worker, Aboriginal Cultural Worker, and Aboriginal Child Care Worker.

- **School District No. 48 (Sea to Sky)**: Hiring preference given to qualified teachers of Aboriginal ancestry to a maximum of 43 positions.

- **School District No. 61 (Greater Victoria)**: Hiring preference given to qualified teachers of Aboriginal ancestry to a maximum of 70 teachers.

- **School District No. 63 (Saanich)**: Hiring preference given to individuals of Aboriginal ancestry for the positions of First Nations Support Teachers and First Nations Education Assistants.

- **School District No. 68 (Nanaimo-Ladysmith)**: Restrict hiring to individuals of Aboriginal ancestry for the positions of Teachers; Aboriginal Education Assistant; Aboriginal Assistant, Alternative; Aboriginal Assistant, Transitions; Abo-riginal Assistant, Supervisor Aide; Aboriginal Tutor Secondary; and District Assistant, Aboriginal Education.

- **School District No. 69 (Qualicum)**: Hiring preference given to individuals of First Nations, Métis and Inuit ancestry for teaching positions and for a Home School Liaison Worker.

- **School District No. 74 (Gold Trail)**: The establishment of Aboriginal Student Scholarships in the amount of $500 to each of six students in the school district.

- **School District No. 82 (Coast Mountains)**: Hiring preference given to individuals of Aboriginal ancestry who have an intimate knowledge of First Nations language and culture for Aboriginal education positions.

- **Thompson Rivers University**: Restrict hiring to an individual of Aboriginal ancestry for the positions of Aboriginal Mentor & Community Coordinator and Executive Director of Aboriginal Education.

- **University of British Columbia**: Approval of measures to redress the salary gap between male and female faculty.

- **Vancouver Island University**: Hiring preference given to an individual of Aboriginal ancestry for the position of Education Counsellor, Services for Aboriginal Students.

Tribunal Members

Robert B. Blasina, Member

Mr. Blasina was appointed a full-time Member of the Tribunal on August 2, 2011. Mr. Blasina graduated from the University of Toronto in 1971, with a Bachelor of Arts in Economics and from Queen's University in 1974, with a Bachelor of Laws. He was called to the Bar of British Columbia in 1977, and he obtained a Chartered Arbitrator designation in 1999 through the British Columbia Arbitration and Mediation Institute.

He first practiced labour law, representing a number of trade-unions, and then as an arbitrator and mediator with respect to collective agreement and employment issues. Prior to coming to the Tribunal, Mr. Blasina had twenty-four years of experience as a consensual arbitrator and mediator, and has served on the Boards of the Arbitrators' Association of British Columbia and the British Columbia Arbitration and Mediation Institute.

Murray Geiger-Adams, Member

Mr. Geiger-Adams was appointed a full-time Member of the Tribunal on March 9, 2009 for a six-month term under a Chair's appointment. He was most recently reappointed for a five-year term expiring in January 2015.

He holds a law degree from the University of Toronto (1985), and a Bachelor of Arts (Honours) degree in political science from the University of British Columbia (1975).

Prior to joining the Tribunal, and from 1997-2008, Mr. Geiger-Adams was legal counsel for a professional association responsible for collective agreement administration.

Before that, and from 1985-1997, he was a student, associate and then partner in a Vancouver law firm, representing clients in matters including labour, human rights, Aboriginal rights and employment.

Diana Juricevic, Member

Ms. Juricevic was appointed a full-time Member of the Tribunal on February 16, 2012 for a five-year term. She holds a Juris Doctor and Master of Economics degree from the University of Toronto (2004). She also holds an Honours Bachelor of Arts degree from the University of Toronto (2001).

Prior to joining the Tribunal, Ms. Juricevic practised international criminal law before tribunals in The Hague and Cambodia. She was also the Acting Director of the International Human Rights program at the University of Toronto Faculty of Law where she taught courses on international criminal law and human rights advocacy.

At the outset of her career, Ms. Juricevic was an associate at a national law firm practising in the areas of civil litigation, administrative law, and human rights.

Enid Marion, Member

Ms. Marion was appointed a full-time Member of the Tribunal, effective July 27, 2008 for a five-year term. In July 2013 and January 2014, Ms. Marion was appointed on two six-month terms pursuant to section 6 of the *Administrative Tribunals Act*. She holds a law degree from the University of Victoria (1988).

Prior to joining the Tribunal, Ms. Marion practiced labour, employment and human rights law as an Associate with a Vancouver law firm and as an Associate and then Partner with another Vancouver law firm.

Tribunal Members

Catherine McCreary, Member

Ms. McCreary was appointed a full-time Member of the Tribunal on April 2, 2012 for a temporary one-year term. In May 2012, she was appointed on a five-year term expiring in May 2017. A graduate of the University of Calgary Faculty of Law, she worked in British Columbia and Alberta as an arbitrator, mediator and investigator. She was a Vice-Chair of the BC Labour Relations Board from 2000 to 2006. Ms. McCreary worked as in-house counsel to Teamsters Local 213 after moving to BC from Alberta in 1997. In Alberta, she worked with the law firm McGown Johnson and acted as counsel, usually to unions and employees.

Ms. McCreary served on the boards of directors of Vancity and Central 1 Credit Union and recently was appointed by FICOM to serve on the Task Force on Credit Union Governance. She sometimes works as a Governance Coach to member-based organizations.

Judith Parrack, Member

Ms. Parrack was appointed a full-time Member of the Tribunal on August 1, 2005 for a five-year term. She is currently authorized, pursuant to section 7 of the *Administrative Tribunals Act*, to continue to exercise powers as a member over continuing proceedings until completion. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

Ms. Parrack was an Associate with a national law firm from 1989 to 1994 and a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999. She was a full-time Member of the B.C. Human Rights Tribunal from 1999 to 2002.

Prior to re-joining the Tribunal in 2004, Ms. Parrack was in private practice in the areas of Labour, Human Rights and Administrative Law.

Norman Trerise, Member

Mr. Trerise was appointed a full-time Member of the Tribunal on December 2, 2010 for a five-year term.

He holds a law degree from the University of British Columbia (1973) and a Bachelor of Arts degree from the University of Oregon (1969).

Prior to his appointment, Mr. Trerise practised labour, employment, human rights and administrative law as a partner with a national law firm.

Marlene Tyshynski, Member

Ms. Tyshynski became a full-time Member of the Tribunal on December 1, 2005 for a temporary six-month term.

Upon expiry of her term, Ms. Tyshynski returned to her position as legal counsel to the Tribunal. In October 2007, following amendments to the *Administrative Tribunals Act*, the Chair appointed her to a second six-month term. In April 2008 and February 2014, Ms. Tyshynski was appointed to five-year terms, the latter expiring in 2019.

She holds a law degree from the University of Victoria (1988), a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

At the outset of her career, Ms. Tyshynski was an associate with two law firms in Victoria. She was in private practice for several years specializing in, among other areas, Administrative Law, then she worked as a staff lawyer for the Legal Services Society.

Prior to her appointment as Member, Ms. Tyshynski served as legal counsel to the Tribunal for three years.

Tribunal Members

Walter Rilkoff, Member

Mr. Rilkoff was appointed a full-time Member of the Tribunal on February 28, 2014 for a five-year term. He graduated from the University of British Columbia in 1970 with a B.A. (Hons.) in Political Science; from York University with an MA in 1972 and a Law Degree from Osgoode Hall Law School in 1975.

Mr. Rilkoff commenced his legal career as a Legal Assistant to the then Chair of the B.C. Labour Relations Board. Prior to joining the Tribunal, Mr. Rilkoff was engaged in private practice for over 37 years representing individuals, employers and trade unions in all aspects of employment-related law including labour relations, employment, human rights and privacy.

Bernd Walter, Chair

Mr. Walter was appointed Chair of the Tribunal on August 1, 2011 for a five-year term. He also chairs the British Columbia Review Board.

Mr. Walter has chaired a number of BC Tribunals. He has also served as an ADM in the BC Public Service, as well as in Alberta and Ontario. He served as Alberta's First Children's Advocate.

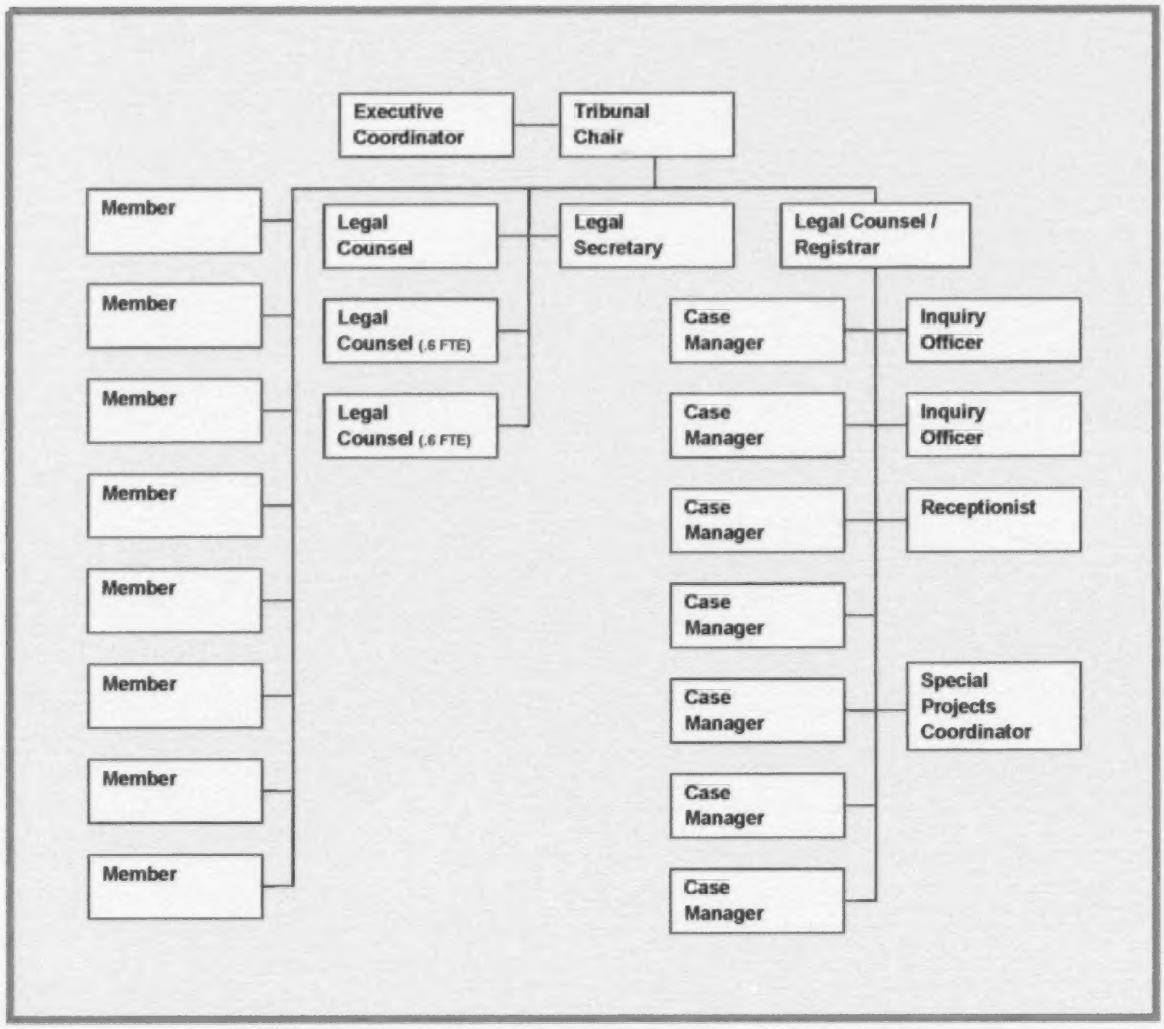
Mr. Walter's background includes program, policy and law reform, in particular in child protection, adoption, Aboriginal child and family services, child, youth and adult mental health and children's rights. He has also participated in First Nations Residential Schools reconciliation and healing work.

Cost of Operation

BC Human Rights Tribunal Operating Cost
Fiscal Year 2013-2014

Category	Expenditure	Delegated Budget	Variance
Salaries (Chair, Members, Registry and Administration)	$ 2,016,765	$ 2,189,000	$ 172,235
Employee Benefits	$ 484,283	$ 525,000	$ 40,717
Expired-Term Members – Fees for Completing Outstanding Decisions	$ (432)	$ 20,000	$ 20,432
Travel	$ 50,054	$ 73,000	$ 22,946
Centralized Management Support Services	$ 0	$ 0	$ 0
Professional Services	$ 209,129	$ 150,000	$ (59,129)
Information Services, Data and Communication Services	$ 11,640	$ 4,000	$ (7,640)
Office and Business Expenses	$ 100,062	$ 65,000	$ (35,062)
Statutory Advertising and Publications	$ 2,186	$ 2,000	$ (186)
Total Cost	**$ 2,873,687**	**$ 3,028,000**	**$ 154,313**

Organization Chart



Administrative Staff

Registrar / Legal Counsel
Steven Adamson

Executive Coordinator
Andrea Nash

Legal Counsel
Jessica Connell
Katherine Hardie (part-time)
Denise Paluck (partial year)

Legal Secretary
Nikki Mann

Case Managers
Carla Kennedy
Anne-Marie Kloss
Lorne MacDonald
Cristin N. Popa
Cheryl Seguin
Sandy Tse
Daniel Varnals

Special Projects Coordinator
Luke LaRue

Inquiry Officers
Rose Andries (partial year)
Mattie Kalicharan
Paul Rondeau (partial year)

Reception
Janet Mews (partial year)

The core mission of the
British Columbia Human Rights Tribunal
is the timely and fair resolution of disputes
involving the human rights of all
British Columbians

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